THE HON'BLE SRI JUSTICE V.V.S.RAO

W.P.Nos.12564 and 13730 of 2005

09.8.2005

Between

W.P.No.12564 of 2005

T.V.S.S.Kumar, S/o.T.Venkateswarlu, Hindu, S.T.,
25 years, II year MBA, Viswabharathi Post Graduate College
of Engineering and Management, Kukatpally, Hyderbad.

… Petitioner

AND

1. The Commissioner of Tribal Welfare, Government of A.P.,
Telugu Samkshema Bhavan, Masab Tank, Hyderabad
And five others.

… Respondents

W.P.No.13730 of 2005

T.V.S.S.Kumar, S/o.T.Venkateswarlu, Hindu, S.T.,
25 years, II year MBA, Viswabharathi Post Graduate College
of Engineering and Management, Kukatpally, Hyderbad.

… Petitioner

AND

1. The Commissioner of Tribal Welfare, Government of A.P.,
Telugu Samkshema Bhavan, Masab Tank, Hyderabad
And six others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

W.P.Nos.12564 and 13730 of 2005

COMMON ORDER:

The petitioner obtained admission in M.B.A. course in Viswa Bharathi Post Graduate College of Engineering and Management. He completed first year. While he was prosecuting his second year studies, the Commissioner of Tribal Welfare by letter Rc.No.4565/2004/TRI/VC-4 dated 4.6.2005 addressed to the Principal of the College requested to take necessary action against the petitioner as per rules as the petitioner does not belong to "yanadi" Scheduled Tribe community. Be it noted, the petitioner obtained admission into the course claiming himself to be a Scheduled Tribe candidate. Assailing the said letter of the Commissioner, the petitioner filed W.P.No.12564 of 2005. He also sought for interim direction to the Commissioner, the Director of Admissions (M.B.A/M.C.A) and the Principal of the College to permit him to appear for IV Semester Examinations of M.B.A. scheduled on 02.7.2005. This Court admitted the writ petition on 15.6.2005 and also passed interim orders in W.P.M.P.No.15972 of 2005.

It appears that the Osmania University to which Viswa Bharathi Post Graduate

College of Engineering was affiliated to issued a letter on 15.6.2005 requesting the Principal to take action for cancellation of admission. Pursuant thereto on the same day, the College issued a letter to the petitioner informing that his admission is cancelled. The letter of the Commissioner dated 04.6.2005 and two letters, one issued by the Osmania University and another issued by the College, are again assailed in W.P.No.13730 of 2005 to permit the petitioner to appear for IV semester examination by suspending the proceedings of the Commissioner dated 04.6.2005. This Court while admitting the writ petition on 28.6.2005 passed interim orders in W.P.M.P.No.17436 of 2005 as prayed for.

Though the interlocutory applications are listed, the matter was heard finally and both the writ petitions are being disposed of by this common order.

The A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issuance of Community Certificates Act, 1993 (the Act) and A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (the Rules) govern the procedure for issuance of community certificates and cancellation of such certificates. Section 5 of the Act confers power on the District Collector to cancel a community certificate, which was obtained fraudulently by following the procedure contemplated under Section 5 of the Act read with Rule 9 of the Rules. To begin with, the Commissioner of Tribal Welfare was not vested with any power either to withdraw or cancel the community certificate issued by competent authority like the Mandal Revenue Officer or the Revenue Divisional Officer, as the case may be. Sub-rule (10) of Rule 9 of the Rules was amended, which reads as under:

> In respect of Tribals, the Commissioner of Tribal Welfare, either suo motu or on a written complaint by any person or on request made by an employer/educational Institution/appointing authority, shall enquire into the correctness of any community nativity and date of birth certificate already issued and if it is found that the said certificate is obtained fraudulently, shall refer the case to connected Collector to the Government for its cancellation as per the procedure laid down Section 5 of the Act.

A plain reading of the above rule would show that the scope of power vested in the Commissioner of Tribal Welfare is very limited. If, on a complaint made by any person, the Commissioner comes to a *prima facie* conclusion that the community certificate is obtained fraudulently, he shall have referred to the District Collector for cancellation as per Section 5 of the Act.

A reading of the letter dated 04.6.2005 issued by the Commissioner of Tribal Welfare would show that he only advised the Principal to take necessary action. A copy thereof was also sent to the Director of Admissions (M.B.A/M.C.A), Osmania University but the said letter nowhere purports to cancel the community certificate obtained by the petitioner for procuring M.B.A. admissions. But, curiously, the Commissioner of Tribal Welfare does not even mark a copy to the District Collector, Nellore from whose jurisdiction the petitioner obtained community certificate. This is a lapse on the part of the Commissioner.

It is brought to the notice of this Court that by reason of the interim orders passed by this Court, the petitioner appeared for IV Semester Examinations including *Viva-voce* and the results are awaited. Viswa Bharathi Post Graduate College of Engineering and Osmania University also raised objection that the petitioner has shortage of attendance and therefore, he is not eligible to appear for M.B.A. Final year examinations. Now, the appearance of the petitioner for Final year examinations is a *fait accompli*.

This aspect of the matter is now academic. However, unless and until the competent authority i.e., the District Collector, Nellore looks into the complaint made against the petitioner that he obtained a community certificate fraudulently the result of the petitioner may not be announced. The same shall be subject to outcome of the enquiry by the District Collector, who is arrayed as respondent No.4 in W.P.No.12564 of 2005 and respondent No.5 in W.P.No.13730 of 2005.

This Court, therefore, directs the Commissioner of Tribal Welfare to make a reference in accordance with sub-rule (10) of Rule 9 of the Rules to the District Collector, Nellore within a period of two weeks from the date of receipt of a copy of this order. After receiving such reference, the District Collector shall immediately initiate enquiry under Section 5 of the Act read with Rule 9 of the Rules and decide the matter within a period of three months thereafter. If the enquiry goes against the petitioner, it shall be open to the petitioner to avail appropriate appellate remedy under the Act. Till then the result of the petitioner shall not be announced.

The writ petitions, with the above directions, are disposed of.

_____

(**V.V.S.RAO,J**)

August 09, 2005.

YS